Supreme Court, U. S.
FILED
APR 4 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1980

No. 79-1357

THE AMERICAN OIL COMPANY,

Petitioner,

vs.

GEORGE ARNOTT,

Respondent.

BRIEF IN RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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April 2, 1980

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent, George Arnott ("Arnott"), respectfully requests that the Petition for Writ of Certiorari seeking review of the opinion and judgment of the Court of Appeals for the Eighth Circuit be denied.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 609 F.2d 873 (8th Cir. 1979) and is set out in Petitioner's Appendix 1a-36a. The order denying rehearing en banc is set out in Petitioner's Appendix 39a. The judgment of the District Court is set out in Petitioner's

Appendix 43a-44a.

JURISDICTION

Petitioner, The American Oil Company ("Amoco"), seeks to invoke the jurisdiction of this Court under 28 U.S.C. §1254(1). Arnott believes that the petition herein is untimely. The Court of Appeals' judgment of which review is sought was entered October 24, 1979. Amoco's petition for rehearing was denied November 29, 1979 (Petitioner's Appendix 39a). Ninety-seven days later, on March 5, 1980, the Petition for Writ of Certiorari was filed.

QUESTIONS PRESENTED

I. Whether the Petition for Writ of Certiorari was filed in a timely manner.

II. Whether the District Court and Court of Appeals erred in finding that the jury verdict of fraudulent misrepresentation under South Dakota law was supported by substantial evidence.

III. Whether the District Court committed prejudicial error in instructing the jury that the fiduciary relationship existed between Amoco and its dealer Arnott under South Dakota law.

IV. Whether the District Court and Court of Appeals erred in finding that the jury verdict of a price-fixing combination in violation of the Sherman Act, 15 U.S.C. §1, was supported by substantial evidence.

V. Whether the Court of Appeals erred in finding that the evidence amply supported the compensatory damage award of the jury in the sum of $100,000.00 on any of the three counts of fraudulent misrepresentation, breach of fiduciary duty, and violation of anti-trust laws.

VI. Whether the Court of Appeals erred in setting aside the anti-trust treble damage award and in refusing to make an award of attorney's fees.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

The jury found, in answer to special interrogatories, Amoco guilty of (1) fraudulent misrepresentation, (2) breach of fiduciary duty, and (3) retail price-fixing in violation of the anti-trust laws. The first two issues involve solely South Dakota law. See Petitioner's Appendix 53a-57a. The price-fixing claim is based upon Section 1 of the Sherman Act, 15 U.S.C. §1, which provides:

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal.

STATEMENT OF THE CASE

This action involves the relationship between a major oil company, Amoco, and Arnott, one of its service station dealers. On August 6, 1973, Amoco terminated Arnott

as a Standard Oil dealer by terminating his lease and evicting him from his service station. The jury found in answer to special interrogatories that (1) Amoco was guilty of false and fraudulent misrepresentations regarding the conditions and duration of the service station lease agreement; (2) Amoco breached the fiduciary duty owed to dealer Arnott by terminating his lease for his refusal to agree to fix the retail price of gasoline, for his refusal to purchase and display tires, batteries and accessories ("TBA") only from Amoco, and for his refusal to participate in certain promotional and merchandising activities during the term of the lease agreement; (3) Amoco was guilty of a retail price-fixing combination in violation of Section 1 of the Sherman Act.

The statement of facts in Amoco's Petition sets out only those facts favorable to itself and totally ignores the overwhelming evidence in the record supportive of the jury verdict. Amoco seeks to avoid the well-established rule that the evidence and all reasonable inferences therefrom must be viewed in a light most favorable to the jury verdict. The facts are set forth in detail in the Eighth Circuit opinion and need not be repeated herein. Accordingly, Arnott simply refers this Court to the factual statement set out by the Court of Appeals. See Petitioner's Appendix 1a-8a; 609 F.2d 873-879.

REASONS WHY THE WRIT SHOULD BE DENIED

I.
THE ISSUES SOUGHT TO BE RAISED BY PETITIONER ARE NOT OF SUFFICIENT SCOPE OR

IMPORTANCE TO WARRANT REVIEW BY THIS COURT

None of the usual factors that might impel this Court to review the decision below are present. No questions of constitutional or federal statutory law are raised; nor is there any conflict among the Court of Appeals; nor are the issues involved likely to be reoccurring. Rather, this is a diversity case that turns entirely upon the unique facts of this case. In light of the remittitur filed by Arnott relating to the price-fixing claim, only questions of state law remain at issue, and no one, other than the litigants themselves, will be affected by the outcome. Even the anti-trust issue involves only the question of sufficiency of the evidence to support the jury verdict.

Further review by this Court would only involve the examination of proper evidentiary rulings, of proper jury instructions, and of findings derived from a complex factual setting. In essence, Amoco seeks a fourth review of the sufficiency of the evidence in the lengthy trial record already reviewed once by the District Court and twice by the Court of Appeals. As this Court has oft repeated: "We do not grant certiorari to review evidence and discuss specific facts." United States v. Johnson, 268 U.S. 220, 227 (1925).

II.
IN ANY EVENT, THE COURT OF APPEALS GAVE FULL CONSIDERATION TO THE ISSUES RAISED BY AMOCO AND DECIDED THEM CORRECTLY

Amoco raised a multitude of issues before the Court of Appeals. In its 40

page decision, the Eighth Circuit reviewed each issue fully and in detail. The well-reasoned opinion speaks for itself and need not be repeated herein. Suffice it to say that the Eighth Circuit addressed each of the arguments raised by Amoco and properly rejected them as without support in the record or at law.

The Eighth Circuit specifically held that the jury findings of fraudulent misrepresentation, breach of fiduciary duty, and violation of anti-trust laws were all supported by substantial evidence and that the jury was properly instructed on these issues. The Eighth Circuit further held that the evidence amply supported the $100,000.00 compensatory damage award on any of the three counts. The underlying basis for this decision was that the sole evidence of damages offered at trial was the same on all three counts -- loss of future profits. Accordingly, Amoco must show prejudicial error with reference to all three counts before it is entitled to a new trial.

III.
THE PETITION FOR WRIT OF CERTIORARI WAS FILED UNTIMELY

The opinion and judgment of the Court of Appeals was filed October 24, 1979. (Petitioner's Appendix 1a). Amoco's petition for rehearing was denied November 29, 1979. (Petitioner's Appendix 39a). Amoco's Petition for Writ of Certiorari was not filed until March 5, 1980, a period of 97 days after its petition for rehearing was denied. While it is true that the Court of Appeals entered a second judgment on December 6, 1979, that judgment only acknowledged receipt of Arnott's

remittitur. Amoco's appeal was not from this later judgment accepting the Arnott remittitur. The judgment sought to be reviewed was filed earlier on October 24, 1979, and the petition for rehearing of that judgment was denied November 29, 1979. Accordingly, Amoco's petition was not filed in a timely manner, and it should be dismissed.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Dated at Sioux Falls, South Dakota, this 2nd day of April, 1980.

Respectfully submitted,

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